

AMENDED IN SENATE MAY 22, 2003
AMENDED IN SENATE APRIL 21, 2003
AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 543

Introduced by Senator Machado

February 20, 2003

An act to add Chapter 1.5 (commencing with Section 1249) to Part 2 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, as amended, Machado. Water rights: groundwater cleanup operations.

Existing law authorizes the State Water Resources Control Board to grant permits and licenses to appropriate water in accordance with certain procedures. Existing law authorizes various public agencies to order a person who has contaminated water to clean up the water or to take other remedial action.

This bill would *prohibit the water produced from a groundwater cleanup operation from being used by the operator of a groundwater cleanup operation or from being transferred, assigned, or conveyed to a third party for use, until a replacement water supply has been provided to every groundwater right holder injured by the contamination. The bill would provide that no right shall vest in the operator of a groundwater cleanup operation by virtue of its extraction, treatment, and discharge of water from that operation.* ~~require the operator of a groundwater cleanup operation, as defined, to hold any water produced by the operation in constructive trust for the benefit of every public water system that has suffered injury as a result of the contamination of~~

~~that water. The bill would set forth when the constructive trust would be discharged. The bill would prohibit the state board from granting a permit or license to appropriate water, or approving a transfer of water, that is produced and discharged by the operator to a body of surface water or a subterranean stream flowing through a known and definite channel unless the operator has agreed to provide replacement water to the public water system injured by the contamination. The bill would provide that the temporary custody of water pursuant to a groundwater cleanup operation is not a beneficial use of water.~~

Vote: majority. Appropriation: no. Fiscal committee: yes *no*. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 1249) is added to Part 2 of Division 2 of the Water Code, to read:

CHAPTER 1.5. GROUNDWATER SUBJECT TO A CLEANUP
OPERATION

~~1249.—The operator of a groundwater cleanup operation shall hold any every water produced by the operation in constructive trust for the benefit of every public water system that has suffered injury as a result of the contamination of that water, . Unless otherwise provided by agreement between the operator and the owner of the injured public water system or systems, the constructive trust shall only be deemed discharged upon a determination by a court of competent jurisdiction that the operator has provided a replacement water supply to every public water system injured by the contamination.~~

~~1249.2.—(a) The board may not grant a permit or license to an operator of a groundwater cleanup operation for the appropriation of water, or approve the transfer of water, that is produced and discharged by the operator to a body of surface water or a subterranean stream flowing through a known and definite channel unless the operator has agreed to provide replacement water to the public water systems injured by the contamination.~~

~~(b) Nothing in this section may be construed as creating or extending the board's jurisdiction over the appropriation or~~

~~administration of groundwater as may otherwise be provided by law.~~

~~1249.3. Notwithstanding any other provision of law, and for the purposes of this chapter, the temporary custody of water pursuant to a groundwater cleanup operation shall not be considered a beneficial use of water.~~

~~1249.4.—~~

1249. The water produced from a groundwater cleanup operation may not be used by the operator of a groundwater cleanup operation or transferred, assigned, or conveyed to a third party for use, until a replacement water supply has been provided to every groundwater right holder injured by the contamination.

1249.2. Notwithstanding any other provision of law, no right shall vest in the operator of a groundwater cleanup operation by virtue of its extraction, treatment, and discharge of water from that operation.

1249.3. (a) The definitions set forth in this section govern the construction of this article.

~~(b) “Injury” or “injured” means a material diminution in value of a public water system, or loss of a public water system’s ability to store, extract, treat, or distribute groundwater for public use.~~

~~(c)—~~

(b) “Groundwater cleanup operation” means any operation or program designed or implemented to remediate or abate groundwater contamination pursuant to an approved work plan or order issued by a federal agency or a state agency, including a regional board, for the cleanup or remediation of contaminated groundwater.

(c) “Groundwater right holder” means any person or government entity that possesses a right to percolating groundwater and not groundwater within a subterranean stream flowing through known and definite channels as provided by existing law.

(d) “Injury” or “injured” means harm caused by any of the following:

(1) Contamination of a groundwater right holder’s supply source.

1 (2) *The inability of a groundwater right holder to use any*
2 *groundwater supply source because it is threatened by*
3 *contamination.*

4 (3) *The inability of a groundwater right holder to use any*
5 *groundwater supply source because its use will cause a migration*
6 *or dispersal of the contamination.*

7 (e) “Operator” means any person engaged in a groundwater
8 cleanup operation or agent of that person designated by the
9 operator for that purpose. *The term “operator” shall only apply to*
10 *a person that has been identified by a state, federal agency, or a*
11 *court of competent jurisdiction as responsible or potentially*
12 *responsible for all or part of the groundwater contamination.*

13 ~~(d) “Public water system” has the same meaning as that set~~
14 ~~forth in subdivision (h) of Section 116275 of the Health and Safety~~
15 ~~Code.~~

16 ~~(e) “Replacement water supply” means an alternative supply~~
17 ~~of water of comparable quantity and quality to that existing prior~~
18 ~~to the contamination of that water, including water that is required~~
19 ~~for summer time “peaking” and fire flow pipeline distribution~~
20 ~~capacity.~~

21 ~~(f) “Groundwater cleanup operation” means any operation or~~
22 ~~program designed or implemented to remediate or abate~~
23 ~~groundwater contamination pursuant to an approved work plan or~~
24 ~~order issued by a federal agency or a state agency, including a~~
25 ~~regional board, for the cleanup or remediation of contaminated~~
26 ~~groundwater.~~

27 (f) “Replacement water supply” means a water supply
28 delivered to the groundwater right holder to be substituted for the
29 contaminated groundwater supply, which does not impose
30 additional costs upon the groundwater right holder, and which is
31 of comparable quantity and quality to that existing prior to the
32 contamination of the groundwater supply, including water that is
33 required for “peaking” and fire flow pipeline distribution
34 capacity.

35 (g) “Work plan” means a schedule of actions to clean up or
36 remediate contaminated groundwater, that is approved by a state
37 or federal agency, for the purposes of the clean up and remediation.

